

**In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division**

In the matter of:

MABEL E. CLARY  
(Chapter 7 Case Number 95-20829)

*Debtor*

R. MICHAEL SOUTHER, Trustee

*Plaintiff*

v.

SANDRA G. CLARKE

*Defendant*

Adversary Proceeding

Number 98-2040

**FILED**  
at 9 O'clock & 00 min. AM  
Date 2/8/99  
MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia

**ORDER ON TRUSTEE'S MOTION FOR SUMMARY JUDGMENT**

Before the Court is the motion for summary judgment filed by the Plaintiff, Trustee R. Michael Souther ("Trustee"), against the Defendant, Sandra G. Clarke, in the Trustee's action to determine the validity of the Defendant's lien against real property of the Debtor's estate. The Trustee's motion was filed on October 1, 1998. By virtue of the Federal Rules of Bankruptcy Procedure, Rule 7056, and Local Rules 56.1 and 7.5 of the Southern District of Georgia, Defendant was given twenty (20) days

to respond. Debtor has not filed a response to the Trustee's motion in this Court. I therefore make the following Findings of Fact and Conclusions of Law in accordance with Federal Rule of Bankruptcy Procedure 7052.

### FINDINGS OF FACT

Debtor Mabel Clary filed a petition for bankruptcy relief in this Court on October 10, 1995, under Chapter Seven of the Bankruptcy Code. Mr. Souther was appointed as Trustee in the bankruptcy case. At the time of filing, Ms. Clary owned real property located at 2309 Woodland Way, Brunswick, Georgia ("Woodland Property").

Almost twenty years prior to the petition for relief, Ms. Clary executed a promissory note in favor of Defendant Ms. Clarke for the principal amount of \$6500.00 on March 29, 1976. (Doc. 1, Ex. A). The promissory note provides for annual interest of 8.5% and became due on July 1, 1976. In the event of default, the note provides that the unpaid principal shall bear interest at an annual rate of 8% per year from the default date. At the same time that the Debtor executed the promissory note, she also executed a Deed to Secure Debt in favor of Ms. Clarke to secure payment of the note. (Doc 1, Ex. B). Ms. Clarke recorded the Deed on May 14, 1976, in the Superior Court of Glynn County.

The promissory note has not been paid; however, Ms. Clarke has not taken legal action to collect on the debt. Ms. Clarke also has not begun any foreclosure proceedings against the Woodland Property. The Deed to Secure Debt has not been renewed and no claim relating to the note or the deed was timely filed in the bankruptcy case.

### CONCLUSIONS OF LAW

Summary judgment shall be granted to a moving party if the evidence shows "that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R.Civ. P. 56(c). The rule provides further that:

When a motion for summary judgment is made and supported as provided in this rule, the adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R.Civ. P. 56(e). Ms. Clarke did not file a response to the Trustee's motion. Pursuant to Local Rule 56.1, "all material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by a

statement served by the opposing party." This Court finds, therefore, that no genuine issue of material fact exists and that Defendant Ms. Clarke does not oppose entry of summary judgment in favor of the Trustee.<sup>1</sup>

### ORDER

In consideration of the foregoing, it is therefore the order of this Court that the Trustee's Motion for Summary Judgment is granted. The lien asserted by Ms. Clarke in the Woodland Property is invalid.



---

Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 30th day of Feb January, 1999.

---

<sup>1</sup> Even if Ms. Clarke were not barred from asserting a claim by the local rules, the lien on the Woodland property lapsed on July 1, 1996. First, an action on the promissory note itself is time-barred by O.C.G.A. 9-3-24, which provides a six-year statute of limitations on "unsealed" promissory notes. Second, even though the underlying action in a deed to secure debt is time-barred, a creditor can still foreclose on the real property in which they hold a security interest pursuant to O.C.G.A. 44-14-43. The statute of limitations for a foreclosure, assuming no renewal of the recorded security interest, is 20 years from the date the debt matured, which in this case is July 1, 1976. (Complaint Ex. A).

Since the Debtor filed her bankruptcy case on October 10, 1995, though, the time to foreclose had not yet run. The Code then provides that in such a situation, the creditor has until the later of (1) the end of the time limitation (July 1, 1976), or (2) 30 days after the expiration of the automatic stay. 11 U.S.C. § 108(c). The automatic stay ended when the Debtor was granted a discharge, or January 23, 1996, so the 30 days expired on February 22, 1996. Since July 1 is the latest date, Ms. Clarke had until that date to take action under the deed to secure debt.